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23 Countrywide Home Loans, Inc.,
24 CWALT, Inc., CWMBS, Inc., CWABS,
25 Inc., CWHEQ, Inc., Countrywide Capital
26 Markets, Countrywide Securities Corp.,
27 and N. Joshua Adler

28
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In re COUNTRYWIDE FINANCIAL
CORP. MORTGAGE-BACKED
SECURITIES LITIGATION

Case No. 11-ML-02265-MRP (MANx)

**COUNTRYWIDE DEFENDANTS'
NOTICE OF AND REQUEST FOR
JUDICIAL NOTICE IN SUPPORT
OF THE OMNIBUS REPLY BRIEF
IN SUPPORT OF MOTIONS TO
DISMISS**

Date/Time: February 13, 2012
11:00 a.m.

Date/Time: February 14, 2012
1:00 p.m.

Courtroom: 12

Judge: Hon. Mariana R. Pfaelzer

1 PUTNAM BANK, Individually and
2 on Behalf of All Others Similarly
Situated,

3 Plaintiff,

4 v.

5 COUNTRYWIDE FINANCIAL
CORPORATION, *et al.*,

6 Defendants.

Case No. 11-CV-04698-MRP (MANx)

7
8 BANKERS INSURANCE
COMPANY, *et al.*,

9 Plaintiffs,

10 v.

11 COUNTRYWIDE FINANCIAL
CORPORATION, *et al.*,

12 Defendants.

Case No. 11-CV-07152-MRP (MANx)

13
14 STERLING FEDERAL BANK,
F.S.B.,

15 Plaintiff,

16 v.

17 COUNTRYWIDE FINANCIAL
CORPORATION, *et al.*,

18 Defendants.

Case No. 11-CV-07163-MRP (MANx)

19
20 WESTERN AND SOUTHERN LIFE
INSURANCE COMPANY, *et al.*,

21 Plaintiffs,

22 v.

23 COUNTRYWIDE FINANCIAL
CORPORATION, *et al.*,

24 Defendants.

Case No. 11-CV-07166-MRP (MANx)

1 AMERICAN FIDELITY
2 ASSURANCE COMPANY

3 Plaintiff,

4 v.

5 COUNTRYWIDE FINANCIAL
6 CORPORATION, *et al.*,

7 Defendants.

8 SEALINK FUNDING LIMITED,

9 Plaintiff,

10 v.

11 COUNTRYWIDE FINANCIAL
12 CORPORATION, *et al.*,

13 Defendants.

14 NATIONAL INTEGRITY LIFE
15 INSURANCE COMPANY,

16 Plaintiff,

17 v.

18 COUNTRYWIDE FINANCIAL
19 CORPORATION, *et al.*,

20 Defendants.

Case No. 11-CV-07167-MRP (MANx)

Case No. 11-CV-08896-MRP (MANx)

Case No. 11-CV-09889-MRP (MANx)

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Defendants Countrywide Financial Corporation, Countrywide Securities Corporation, Countrywide Home Loans, Inc., Countrywide Capital Markets, CWALT, Inc., CWMBBS, Inc., CWABS, Inc., CWHEQ, Inc., and N. Joshua Adler (collectively, the “Countrywide Defendants”), by and through their attorneys of record, hereby request that the Court take judicial notice, pursuant to Federal Rule of Evidence 201 and supporting case law, of the documents and facts listed below in connection with their Omnibus Reply Brief in Support of Motions to Dismiss the above-captioned actions:

EXHIBIT

DESCRIPTION

- | | |
|-----|--|
| 121 | Excerpts from Prospectus Supplement for CWALT 2007-17CB (dated June 28, 2007) |
| 122 | Excerpts from Prospectus Supplement for CWHEQ 2006-S9 (dated December 28, 2006) |
| 123 | Excerpt from Countrywide Financial Corp. Annual Report (Form 10-K) (dated March 1, 2007) |
| 124 | Charlotte A. Chamberlain, <i>No Customer Left Behind</i> , Jeffries & Co. (dated May 25, 2005) |
| 125 | Bloomberg News, <i>Buyers Wary of Lender’s Bonds</i> , Los Angeles Times (dated October 17, 2006). |
| 126 | Robert Lacoursiere, <i>Market Disconnects from Fundamentals: Reiterating Sell Rating</i> , Banc of America Securities (dated October 27, 2006) |
| 127 | Dan Dorfman, <i>Liars’ Loans Could Make Many Moan</i> , New York Sun (dated December 20, 2006) |
| 128 | Gretchen Morgenson, <i>Crisis Looms in Mortgages</i> , New York Times (dated March 11, 2007) |
| 129 | Carol Lloyd, <i>In Tough Real Estate Market, Appraisers Under Pressure</i> , |

San Francisco Chronicle (dated March 18, 2007)

Andy LaPierre, *Mortgage Meltdown*, Wall Street Journal (dated March 21, 2007)

Associated Press, *Mortgage Mess Spreads to Alt-A Segment* (dated April 10, 2007)

Kenneth Harney, *Appraisal Inflation*, The Washington Post (dated April 21, 2007)

Al Yoon, *Subprime Lenders Made Record Exceptions*, Reuters News (dated April 30, 2007)

David Cho, *Pressure at Mortgage Firm Led to Mass Approval of Bad Loans*, The Washington Post (dated May 7, 2007)

Vikas Bijaj, *Rate Agencies Move Toward Downgrading Some Mortgage Bonds*, The New York Times (dated July 11, 2007)

Bleak houses: America's riskiest mortgages are set to pop. Where will the shrapnel land?, The Economist (dated February 17, 2007)

Karen Richardson & Gregory Zuckerman, *Subprime Game's Reckoning Day – Risky Lending Fallout Threatens to Spread; Uncertain ARM Strength*, The Wall Street Journal (dated February 27, 2007)

Annette Haddad, *Even Best Borrowers are Falling Behind, Lender Says; Countrywide's Profit and Stock Price Fall as More 'Prime' Mortgage Holders Miss Payments*, Los Angeles Times (dated July 25, 2007)

Vikas Bijaj, *US mortgage woes spread deeper; German bank's securities freefall rattles markets in Europe*, International Herald Tribune (dated August 1, 2007)

Distressed Debt Relief, The Financial Times (dated September 5, 2007)

Andrew Clark, *Countrywide Upbeat Despite \$1bn Sub-Prime Hit*, The Guardian (dated October 26, 2007)

Gretchen Morgenson, *Additional Scrutiny for Countrywide Financial*, International Herald Tribune (dated December 14, 2007)

Excerpts from Hearing Transcript in *Allstate Ins. Co. v. Countrywide*

1 *Fin. Corp.*, No. 11-CV-5236 (C.D. Cal. September 21, 2011)

2
3 144 Complaint in *United Fin. Casualty Co. v. Countrywide Fin. Corp.*, No.
11-CV-4766 (C.D. Cal. June 3, 2011)

4
5 145 Order re: Motions to Dismiss the Complaint in *Children's Hosp. & Med.*
Ctr. Found. Of Omaha v. Countrywide Fin. Corp., No. 11-CV-02056
(C.D. Cal. August 22, 2011)

6
7 146 Order re: Defendants' Motions to Dismiss in *Centaur Classic Conv.*
Arbitrage Fund. Ltd. v. Countrywide Fin. Corp., No. 11-CV-05699
(C.D. Cal. January 20, 2011)

8
9 147 Ruling re: Defendants' Motion to Transfer in *Putnam Bank v.*
Countrywide Fin. Corp., No. 11-CV-00145 (D. Conn. May 16, 2011)

10
11 148 Excerpt of transcript from Countrywide Financial Corp. Analyst Forum
(March 30, 2004)

12
13 149 Excerpt of transcript from Countrywide Financial Corp. Fixed Income
Analyst Forum (February 28, 2006)

14
15 150 Excerpt of transcript from Countrywide Financial Corp. Financial
Equity Investor Forum (March 30, 2006)

16
17 151 Excerpt of transcript from Countrywide Financial Corp. Fixed Income
Investor Forum (September 13, 2006)

18 This request is based on the attached Memorandum of Points and Authorities in
19 support thereof, the papers, records, and pleadings on file herein, and upon any
20 additional argument or evidence permitted at the hearing on the Countrywide
21 Defendants' Motions to Dismiss.

22 Dated: February 3, 2012

GOODWIN PROCTER LLP

23
24 /s/ Brian E. Pastuszenski

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26
27 *Counsel for the Countrywide Defendants*

MEMORANDUM OF POINTS AND AUTHORITIES

Federal Rule of Evidence 201 provides that a court may take judicial notice of a fact “not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” FED. R. EVID. 201(b). As set forth below, the documents submitted in support of the Countrywide Defendants’ Omnibus Reply Brief in Support of Motions to Dismiss (“Omnibus Reply Brief”) are properly subject to judicial notice.

Exhibits 121-123 are various documents that were publicly filed with the Securities Exchange Commission (“SEC”).¹ It is well-settled that the Court may take judicial notice of SEC filings on a motion to dismiss. *See Dreiling v. Am. Express Co.*, 458 F.3d 942, 946 n.2 (9th Cir. 2006); *In re Finisar Corp. Deriv. Litig.*, 542 F. Supp. 2d 980, 989 n.4 (N.D. Cal. 2008) (“public filings with the SEC are properly the subject of judicial notice in a motion to dismiss”); *In re Computer Scis. Corp. Deriv. Litig.*, 244 F.R.D. 580, 587 n.8 (C.D. Cal. 2007) (same); *Yuen v. U.S. Stock Transfer Co.*, 966 F. Supp. 944, 945 n.1 (C.D. Cal. 1997) (courts “may take judicial notice of the contents of relevant public disclosure documents required to be filed with the SEC as facts capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned”).

Moreover, plaintiffs in many of the actions cite heavily to Countrywide SEC filings in their respective Complaints. *See, e.g., AFAC FAC*, ¶¶ 72, 87, 290, 304; *W&S FAC*, ¶¶ 77-80, 184, 205-7, 243, 257; *NI Compl.* ¶¶ 77-80, 184, 205-7, 243, 257. Thus, the Court may properly take judicial notice of these exhibits for the additional reason that they are incorporated by reference in the underlying Complaints and are documents on which plaintiffs necessarily rely in bringing their claims. *See In re*

¹ In the interests of efficiency, the Countrywide Defendants have submitted excerpts from these documents. Of course, the Countrywide Defendants will submit the documents in their entirety at the Court’s request.

1 *Silicon Graphics, Inc. Sec. Litig.*, 183 F.3d 970, 986 (9th Cir. 1999), *superseded on*
2 *other grounds by statute* (courts may consider documents “whose contents are alleged
3 in a complaint and whose authenticity no party questions, but which are not physically
4 attached to the . . . pleading”); *In re Easysaver Rewards Litig.*, 737 F. Supp. 2d 1159,
5 1166 (S.D. Cal. 2010) (“The rule applies to documents that form the basis of a
6 plaintiff’s case or documents that are quoted extensively on the theory that such
7 documents are not truly ‘outside’ the complaint.”).

8 Exhibits 124-142 are certain publicly available newspaper articles and reports
9 that discuss the global economic crisis and the U.S. housing market collapse that
10 began in 2007. Judicial notice of these articles is appropriate because they are
11 publicly available and their contents are not subject to reasonable dispute. *See Von*
12 *Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010)
13 (holding that judicial notice may be taken of newspaper articles at the motion to
14 dismiss stage in order to “indicate what was in the public realm at the time, not
15 whether the contents of those articles were in fact true”) (internal citation omitted);
16 *Benak ex rel. Alliance Premier Growth Fund v. Alliance Capital Mgmt. L.P.*, 435 F.3d
17 396, 401 n.15 (3d Cir. 2006) (taking judicial notice of “newspaper articles . . . to
18 indicate what was in the public realm at the time”); *In re Rackable Sys., Inc. Sec.*
19 *Litig.*, 2010 WL 3447857, at *3 (N.D. Cal. Aug. 27, 2010) (taking judicial notice of
20 newspaper articles); *In re Wet Seal, Inc. Sec. Litig.*, 518 F. Supp. 2d 1148, 1157-60
21 (C.D. Cal. 2007) (taking judicial notice of various transcripts, press releases, SEC
22 filings, Canadian securities filings, and newspaper articles, because they were either
23 referenced and relied on in the complaint, or, as public records, were of “undisputed
24 authenticity”).²

25 _____
26 ² For the same reasons, the Court may properly consider Tab 3 of the Countrywide
27 Defendants’ Appendix of Tables in Support of Their Omnibus Reply Brief in Support
28 of Motions to Dismiss (“Appendix”), which is concurrently filed herewith. It contains
a table that consists of excerpts from these publicly available newspaper articles and
the investor forums, which are subject to judicial notice as set forth herein.

Exhibits 144-146 are pleadings and orders that were filed with this Court in three other actions involving similar allegations against Countrywide: *United Fin. Casualty Co. v. Countrywide Fin. Corp.*, No. 11-CV-4766 (C.D. Cal.); *Children's Hosp. & Med. Ctr. Found. Of Omaha v. Countrywide Fin. Corp.*, No. 11-CV-02056 (C.D. Cal.), and *Centaur Classic Conv. Arbitrage Fund. Ltd. v. Countrywide Fin. Corp.*, No. 11-CV-05699 (C.D. Cal.). Similarly, Exhibit 147 is the order from the District of Connecticut transferring one of the actions, *Putnam Bank v. Countrywide Fin. Corp.*, to this Court. Clearly, this Court may take judicial notice of pleadings and papers filed with it in related actions, as well as orders and decisions made by it and other courts. *See Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998) (granting request for judicial notice of pleadings in related action); *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986) (same); *Papai v. Harbor Tug & Barge Co.*, 67 F.3d 203, 207 n.5 (9th Cir. 1995) (“[j]udicial notice is properly taken of orders and decisions made by other courts or administrative agencies”); *Kuan v. United States Customs Serv.*, 2009 U.S. Dist. LEXIS 126574, at *4 n.3 (C.D. Cal. 2009) (“The Court may take judicial notice of matters of public record, including court records in a related proceeding.”).³ Judicial notice is proper because these documents are publicly available and their contents are not subject to reasonable dispute. *See* FED. R. EVID. 201.

For this same reason, the Court may take judicial notice of Exhibit 143, an excerpt from the transcript of a hearing held by this Court in a related action that is also part of this multidistrict litigation, *Allstate Ins. Co. v. Countrywide Fin. Corp.*, No. 11-CV-5236 (C.D. Cal.). *See San Francisco Baykeeper v. West Bay Sanitary Dist.*, 2011 WL 1990637, at *6 (N.D. Cal. May 23, 2011) (taking judicial notice of

³ For the same reasons, the Court may properly consider Tabs 1- 2 of the Countrywide Defendants' Appendix, which is concurrently filed herewith. These tabs contain tables that consist of allegations excerpted from publicly filed complaints, which are subject to judicial notice as set forth herein.

1 hearing transcript).

2 Exhibits 148-151 are transcripts from Countrywide's analyst and investor
3 forums.⁴ The plaintiffs in *Bankers Ins. Co. v. Countrywide Fin. Corp.* ("*Bankers*")
4 reference and quote from the September 13, 2006 investor forum—Exhibit 151—in
5 their complaint (*Bankers* Compl. ¶ 40).⁵ The contents of the September 13, 2006
6 investor forum are therefore incorporated by reference into the *Bankers* complaint and
7 may be considered by this court on a motion to dismiss. *In re Taleo Corp. Sec. Litig.*,
8 2010 WL 597987, at *7 (N.D. Cal. Feb. 17, 2010) (taking judicial notice, on a motion
9 to dismiss, of excerpts of SEC filings, conference call transcripts, and press releases,
10 partly on the grounds that "[m]any of these documents are explicitly referred to in the"
11 complaint); *see also United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003)
12 (documents incorporated by reference in complaint may be considered on motion to
13 dismiss). Though the March 30, 2004, February 28, 2006, and March 30, 2006
14 conferences are not specifically referenced in the *Bankers* complaint, the Court may
15 still take judicial notice of them. *See, e.g., In re Nuvelo, Inc. Sec. Litig.*, 668 F. Supp.
16 2d 1217, 1220 (N.D. Cal. 2009) ("Courts hearing securities fraud cases routinely take
17 judicial notice of documents with unquestioned authenticity that demonstrate the
18 information available to the market during the class period."); *Brodsky v. Yahoo! Inc.*,

19
20 ⁴ The analyst and investor forums were publicly disclosed pursuant to SEC Regulation
21 Fair Disclosure ("FD"). *See* SEC Final Rule, 2000 WL 1197687, at *17 ("As a
22 general matter, acceptable methods of public disclosure for purposes of Regulation FD
23 will include press releases distributed through a widely circulated news or wire
24 service, or announcements made through press conferences or *conference calls that*
25 *interested members of the public may attend or listen to either in person, by*
26 *telephonic transmission, or by other electronic transmission (including use of the*
27 *Internet*") (emphasis added); 17 C.F.R. Part 243, 65 FR 51716-01, 2000 WL
28 1197687, at *3, *17 (SEC adopted a flexible definition of "public disclosure,"
specifically contemplating disclosure to the public via webcasting over the internet).
The Court may properly take judicial notice of information that is "capable of accurate
and ready determination by resort to a source whose accuracy cannot be reasonably
questioned." *In re Hansen Natural Corp. Sec. Litig.*, 527 F. Supp. 2d 1142, 1150 n.2
(C.D. Cal. 2007).

⁵ Moreover, the *Bankers* plaintiffs reference several other Countrywide conference
calls and investor forums that are not part of this Request for Judicial Notice. *Bankers*
Compl. ¶¶ 59, 61, 62, 169

630 F. Supp. 2d 1104, 1111 (N.D. Cal. 2009) (“Defendants also seek judicial notice of . . . conference call transcripts. The Court takes judicial notice of the fact that these [conference call] statements were made on the dates specified, but not of the truth of the matters asserted therein.”); *In re Copper Mountain Sec. Litig.*, 311 F. Supp. 2d 857, 863-64 (N.D. Cal. 2004) (taking judicial notice of information that was publicly available at the time the defendant company made the allegedly false statements, including press releases and transcripts of conference calls).

CONCLUSION

For all of the above reasons, the Countrywide Defendants respectfully request that the Court take judicial notice of Exhibits 121-151 and the Appendix filed in support of the Countrywide Defendants’ Omnibus Reply Brief.

Dated: February 3, 2012

GOODWIN PROCTER LLP

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